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SENATE

REPORT
100-468

PROHIBITING THE DEVELOPMENT OF HYDROELECTRIC FACILITIES AND THE CONSTRUCTION OF DAMS ON CERTAIN PORTIONS OF THE SNAKE AND SALMON RIVERS, IDAHO

AUGUST 9, 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2102]

The Committee on Energy and Natural Resources to which was referred the bill (S. 2102) to prohibit the licensing of certain facilities on portions of the Salmon and Snake Rivers in Idaho, and for other purposes; having considered the same, reports favorably thereon with amendments and recommends that the bill as amended, do pass.

1. On page 1, line 4, strike the word "license" and insert the following: "issue any preliminary permit, license, or exemption from licensing for".

2. On page 1, line 4, after the word "dam" insert the following: ", diversion or bypass".

3. On page 2, line 2, before the word "Granite" insert the word "Lower".

PURPOSE

The purposes of S. 2102 are to prohibit the Federal Energy Regulatory Commission from issuing any preliminary permit, license or exemption from licensing for the construction of any dam, diversion or bypass on specified portions of the Snake and Salmon Rivers in the State of Idaho; and, in order to further the purposes of the Wild and Scenic Rivers Act and to protect the values for which certain portions of the Snake and Salmon Rivers in Idaho were designated as components of the wild and scenic rivers

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system, prohibits the construction of dams by any other entity on these specified portions of the Snake and Salmon Rivers.

BACKGROUND

Much of the history of the settling of the western United States is based on the construction of dams to provide irrigation of the arid lands and supply relatively inexpensive electric power to a widespread populace. Many such dams have been constructed in the State of Idaho, using what many people believe are the vast majority of "primary" locations from a geographical and geological perspective. Over several decades, a number of additional dam sites have been proposed or discussed, but for a variety of reasons have never proceeded to actual development. One such area where proposals have never advanced is that located between Hells Canyon Dam and Lower Granite Dam on the Snake River, and on the Salmon River, Idaho, from Long Tom Bar to the confluence of the Snake.

Although dam construction in this area had generally been authorized by Acts of Congress, a number of events during the 1970's and early 1980's changed the direction Congress wished such construction to go. First, in 1975, Congress passed the Act which created the Hells Canyon National Recreation Area (Public Law 94-199) along the Snake River, stretching from the backwaters of Hells Canyon Dam downriver to the Washington-Oregon border. Among other things, this Act specifically prohibited the Federal Energy Regulatory Commission from licensing the construction of "any dam, water conduit, reservoir, powerhouse, transmission line or other project work under the Federal Power Act . . . within the recreation area," and further prohibited any department or agency of the United States to assist "by loan, grant, license or otherwise the construction of any water resource facility within the recreation area."

In addition, Section 5(b) of Public Law 94-199 specifically deauthorized the Corps of Engineers' Asotin Dam, already under construction downriver from the northern boundary of the Hells Canyon National Recreation Area, which had been authorized by the Flood Control Act of 1962 (76 Stat. 1173).

Then, in 1980, passage of the Central Idaho Wilderness Act of 1980 included amendments to the Wild and Scenic Rivers Act (Public Law 90-542) which classified a 125 mile stretch of the Salmon River—from the North Fork of the Salmon to Long Tom Bar—as part of the wild and scenic system, and further restricted FERC and other Federal agency licensing and construction activities on a 53 mile stretch of the river from Hammer Creek downstream to the confluence of the Snake River.

Despite Congressional action to prohibit development along the aforementioned portions of the Snake and Salmon Rivers, there nevertheless remained some interest to develop hydroelectric generation facilities along those portions of the rivers where such specific restrictions did not exist. This interest recently manifested itself in the filing at FERC of preliminary permit applications by Asotin Hydro, Inc., a subsidiary of Consolidated Hydro of Greenwich, Connecticut (Project Nos. 10530 and 10531) and by the Public

Utility District No. 1 of Asotin, Washington (Project No. 10543) for the development of hydro sites on the Snake River downstream from the boundary of the Hells Canyon National Recreation Area. FERC has subsequently granted one of the preliminary permits to Asotin Hydro, Inc.

LEGISLATIVE HISTORY

S. 2102 was introduced on February 26, 1988 by Senator McClure. A hearing was held before the Subcommittee on Water and Power on June 9, 1988. A House companion measure, H.R. 4252, was introduced on March 24, 1988 by Congressman Craig and was referred to the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs.

At the business meeting on August 4, 1988, the Senate Committee on Energy and Natural Resources ordered S. 2102 favorably reported.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on August 4, 1988, by unanimous vote of a quorum present recommends that the Senate pass S. 2102, if amended as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays as follows:

YEAS	NAYS
Mr. Johnston	0
Mr. Bumpers*	
Mr. Ford	
Mr. Metzenbaum*	
Mr. Melcher*	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Fowler*	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield*	
Mr. Weicker*	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	

*Indicates voted by proxy.

COMMITTEE AMENDMENTS

There are three Committee amendments, two of a clarifying nature and the third a technical amendment.

The first amendment provides that the Federal Energy Regulatory Commission is prohibited from issuing preliminary permits

and exemptions from licenses in addition to the issuance of licenses as was provided in the original text.

The second amendment prohibits the construction of diversion and bypass projects in addition to the construction of dams as was provided in the original text.

The third amendment adds the word "Lower" so as to correctly name the Lower Granite Dam on the Snake River in Washington State.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE
Washington, DC, August 8, 1988.

Hon. J. BENNETT JOHNSTON, JR.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2102, a bill to prohibit the licensing of certain facilities on portions of the Salmon and Snake Rivers in Idaho, and for other purposes, as amended and ordered reported by the Senate Committee on Energy and Natural Resources on August 4, 1988. CBO expects that this bill would result in no cost to the federal government, or to state or local governments.

The bill would prohibit the Federal Energy Regulatory Commission from issuing a preliminary permit, license, or exemption for the construction of any dam, diversion, or bypass under the Federal Power Act on specific portions of Salmon and Snake Rivers in Idaho. The bill also prohibits the construction of any dam on the same portions of these two rivers.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley, who can be reached at 226–2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2102. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the measure. Therefore, there would be no impact on personal privacy.

The paperwork associated with the permitting, licensing, or exempting by the Federal Energy Regulatory Commission of hydroelectric facilities on those portions of the Salmon and Snake Rivers included under S. 2102 would be eliminated. Therefore there would

be a reduction in paperwork with the enactment of S. 2102 as reported.

EXECUTIVE COMMUNICATIONS

On March 16, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture, the Department of the Interior, the Federal Energy Regulatory Commission, and the Office of Management and Budget setting forth executive views on S. 2102. Only a report from the Federal Energy Regulatory Commission had been received at the time the report on S. 2102 was filed. When other reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The report provided by the FERC on April 6, 1988 follows:

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, April 6, 1988.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN JOHNSTON: Thank you for your letter of March 16, 1988, concerning S. 2102, a bill to prohibit the licensing of certain facilities on portions of the Salmon and Snake Rivers in Idaho, and for other purposes. Pursuant to your request, enclosed are 50 copies of the Commission staff analysis of the bill for the use of the Senate Committee on Energy and Natural Resources.

I appreciate your inquiry. If I can be of any further assistance in this matter, please do not hesitate to contact me.

Sincerely,

MARTHA O. HESSE.

Enclosure.

REPORT ON S. 2102, 100TH CONG., 2D SESS., A BILL TO PROHIBIT THE LICENSING OF CERTAIN FACILITIES ON PORTIONS OF THE SALMON AND SNAKE RIVERS IN IDAHO, AND FOR OTHER PURPOSES

On February 26, 1988, Senator McClure introduced S. 2102, which provides (in Section 1) that the Commission shall not license the construction of, and (in Section 2) that no one may construct, any dam on specified portions of the Snake and Salmon Rivers in Idaho. The bill states that the bar on dam construction is to further the purposes of the Wild and Scenic Rivers Act and to protect the values for which certain portions of the Salmon and Snake Rivers in Idaho were designated as components of the wild and scenic rivers system.

S. 2102 does not designate the specified portions of the Snake and Salmon Rivers as part of the federal wild and scenic rivers system. Rather, it prohibits the construction of any dams in reaches of these rivers below those portions of the Salmon and Snake Rivers that, as S. 2102 notes, have already been protected under wild and scenic rivers legislation. *See,* particularly, 16 U.S.C. § 1274 (12) and (24). S. 2102 would also overlap a 53-mile segment on the Salmon River already protected under the Central Idaho Wilderness Act of 1980. S. 2102 does not address tributaries of or lands along the des-

ignated segments, nor does it prohibit water-related development, other than the licensing or construction of dams.

S. 2102 prohibits the Commission from licensing (under 16 U.S.C. § 797(e)) the construction of a dam in certain river segments but does not refer to Commission issuance of preliminary permits (16 U.S.C. § 798) or exemptions from licensing (16 U.S.C. § 823a, 16 U.S.C. § 2705). Where licensing is clearly prohibited, the Commission will not issue a preliminary permit. *See, e.g., City of Summersville, W.Va.,* 27 FERC ¶ 61,206 (1984). However, depending on how the term "dam" is defined, parties might argue that certain hydroelectric project proposals on the river segments covered by S. 2102 would not be barred by S. 2102, in that construction of a dam is not involved. If S. 2102 is intended to preclude any use for hydroelectric generation of the water in the specified river segments, whether by construction of a dam or by some other diversion/bypass arrangement, then clarification would be useful.

A review of the Commission's files indicates that three pending applications may be directly affected by S. 2102. These are preliminary permit applications filed by Asotin Hydro Company, Inc. for Project Nos. 10530 and 10531, and by P.U.D. No. 1 of Asotin County, Washington, for Project No. 10543, for sites on the Snake River just upstream from Lewistown, Idaho.

Each of these applications proposes to study hydropower developments that would involve construction of a dam. Commission records show no outstanding licenses, permits, or exemptions from licensing for projects on the portions of the Salmon and Snake Rivers covered by S. 2102.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the committee notes that no changes in existing law are made by the bill S. 2102 as reported.

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